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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

ZACKARY ZAPIEN

CIVIL ACTION NO. 13-2673

VERSUS

JUDGE DOHERTY

LL&G CONSTRUCTION, INC., ET AL.

MAGISTRATE JUDGE HILL

RULING & ORDER

Pending before this Court is the “Motion for Summary Judgment” [Doc. 28] filed by defendant United Production & Construction Services, Inc. (“United”). In response, plaintiff Zackary Zapien has filed both an unopposed “Motion to Continue the Motion for Summary Judgment” [Doc. 31] on grounds Mr. Zapien has insufficient discovery to properly respond to the motion for summary judgment, as well as a “Motion to File FRCP 56(d) Affidavit or Declaration” [Doc. 33]. In the Affidavit, attached to the motion, counsel for Mr. Zapien attests there are unknown factual issues that will affect the content of not only Mr. Zapien’s opposition brief, but the underlying motion for summary judgment as well. Mr. Zapien argues additional discovery is necessary for him to fully respond to United’s motion.

The discovery at issue – outlined in the affidavit – is indeed factual. Pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, if a party opposing a motion shows by affidavit that it cannot present facts essential to justify its opposition, the Court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

Therefore, considering that the dispositive motion deadline in this matter is not until January

21, 2016, there will be no prejudice to United if this Court denies the pending motion for summary judgment as premature and permits Mr. Zapien to take additional discovery. Conversely, significant prejudice could inure to Mr. Zapien were this Court to foreclose the possibility of permitting additional discovery under the circumstances of this case.

Considering the foregoing,

IT IS ORDERED that the "Motion to Continue the Motion for Summary Judgment" [Doc. 31] filed by Mr. Zapien is DENIED AS MOOT and the Motion to File FRCP 56(d) Affidavit or Declaration" [Doc. 33] is GRANTED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment [Doc. 28] filed by United is DENIED AS PREMATURE. Once the requested discovery is completed, United may re-urge its motion.

THUS DONE AND SIGNED in Lafayette, Louisiana this 15th day of July, 2015.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE